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ABSTRACT

This report explores the ways in which the First Amendment affects the rights of the press and the public to examine conditions inside the nation's prisons and jails. Discussion also analyzes the First Amendment's interpretation with regard to the right to gather news, reviews Supreme Court decisions related to the right of access to prisoners or prison facilities, and notes possible future trends in Supreme Court decisions. (GW)

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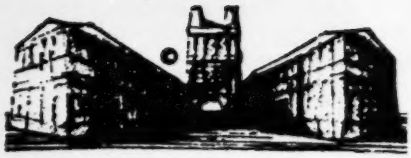

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FREEDOM OF INFORMATION CENTER REPORT NO. 377

KNOCKING AT THE JAILHOUSE DOOR

This report was written by Harold W. Fuson Jr., an attorney, who is assistant professor of journalism at the University of Illinois. He has worked as both a reporter and an editor.

Few people are eager to get *into* jail. Jails and prisons are miserable places. Some would say they are supposed to be miserable, the better to deter the foul of heart from committing the deeds which lead to incarceration. But whatever one's belief about the level of bestiality appropriate to the nation's correctional institutions, few would deny that greater public awareness of conditions behind bars is greatly needed. One way to bring about that heightened awareness is to make sure that prisons and jails are open to the maximum amount of press and public scrutiny consistent with the demands of security.

This paper will explore the ways in which the First Amendment affects the rights of press and public to examine conditions inside the nation's prisons and jails. This exploration also should shed light on a broader question: To what extent does the First Amendment, unaided by legislation, protect the process of news gathering?

Limitations on This Study

Several principles limit the conclusions of this inquiry. First, many factors besides the mere openness of jails and prisons to public and press scrutiny determine the degree of public awareness of prison conditions. An open door does not guarantee that either press or public will enter. Nor does the fact that news is published guarantee that citizens will pay attention.

Second, factors other than the strict technical requirements of the law influence the degree of openness actually prevailing in particular jails and prisons. Both bureaucrats and sheriffs have methods of obfuscation and deterrence at their disposal sufficient to blunt the requirements of the clearest of laws. On the other hand, persistent reporters and citizens can circumvent the roadblocks of the law as surely as they can penetrate bureaucratic smokescreens.

Finally, this paper focuses on the First Amendment and the extent to which it alone requires that prison facilities be held open for inspection. Legislation and administrative regulations on the subject of openness abound. That they are not examined in detail here is not to deny their importance but only to avoid diffusing the focus on the demands of the First Amendment.

The Basis of the Right to Gather News

If the First Amendment is to be useful in guaranteeing the openness of jails and prisons to press and public scrutiny, it must be viewed as more than merely a prohibition against direct prior restraints on publication of information already in the hands of the press or some member of the public.

The First Amendment, like other passages in the Constitution, admits a wide variety of interpretations. Since Justice Holmes' decision in *Schenck v. United States*,[1] the first important Supreme Court ruling on the dimensions of freedom of speech, the First Amendment has been relied on increasingly by those who are critical of government policy. In part, this greater attention to the First Amendment may be traced to the growing congruence between information and power.

Freedom of speech, however defined, certainly implies freedom to attempt to persuade others to accept the speaker's point of view about a public issue. Freedom to attempt to persuade is like any other freedom: it is meaningless to those who lack the power to perform whatever acts they are "free" to perform. The ability to persuade, unlike mere freedom, requires more than just the right to talk freely. It requires first of all the right to talk in a manner which will attract listeners—to have a tall enough, or electronically powerful enough, soap box from which to attract attention.[2] It also requires the ability to construct convincing arguments. Convincing arguments require many ingredients, but one of the most important is credible information. A convincing argument, compiled from credible information and coupled with an adequate medium—a tall enough soap box—equals power.

In the context of public policy debates about the nation's correctional institutions, credible information may include statistics on recidivism, the age of facilities, the training and remuneration of employees, the guard-prisoner

Summary: The question of the right of news media representatives to have access to prisons and jails will be argued before the Supreme Court during this term. The Court's decision could have far-reaching implications for the developing right to gather news.

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ratio or any number of other facts normally considered "information." Access to such information is necessary if the quality of public debate is to be high.

But "information" encompasses more than that which can be reduced to a form digestible by a computer. The information content of a few feet of film showing bullets tearing through Gary Mark Gilmore's torso may be very small by some forms of measurement. But those few feet of film may have incalculable power to move and persuade the viewer. The right of access to such a piece of film is a right conveying great power.

Similarly, the swaying power of a particular piece of objective information may be much stronger when transmitted through the lips of an unrepentant cold-blooded murderer, framed full-face in a motion picture camera, rather than copied from a guard's written report or even from a letter written by the prisoner.

All of this should not suggest that the news media's primary task is to form arguments for one side or another in public controversies—but it *is* the news media to which citizens most often turn as the source of information needed to form arguments on public policy. Ultimately, the quality of public debate depends on access to a maximum amount of information and on access to that information in its most credible form.

The Supreme Court has acknowledged that one of the primary purposes of the First Amendment is to preserve society's interest in "uninhibited, robust and wide-open" debate[3] and it is this interest in the quality of public discussion which the news media have relied on in asserting that the First Amendment is a bar to government imposed restrictions on access to information. Until the 1970s, the news media had little success in the courts, but great strides were taken in the fifties and sixties on the legislative front. All states now have some form of legislation guaranteeing access to certain types of records and/or meetings of government bodies and the federal Freedom of Information Act has been passed. Finally, in 1972, the Supreme Court conceded in *Branzburg v. Hayes* that "news gathering is not without its First Amendment protections."[4] However, the opinion of the court in *Branzburg* stopped short of defining the limits of those protections.

In *Branzburg*, the restriction on access to information was indirect: fear of forced disclosure of sources to grand juries was said to deter potential sources of information from talking to reporters. The court refused to hold that

> the public interest in law enforcement and in ensuring effective grand jury proceedings is insufficient to override the consequential, but uncertain, burden on news gathering that is said to result from insisting that reporters, like other citizens, respond to relevant questions put to them in the course of a valid grand jury investigation or criminal trial.[5]

Justice White's plurality opinion did not deny that news gathering was a right protected by the First Amendment: "Nor is it suggested that news gathering does not qualify for First Amendment protection; without some protection for seeking out the news, freedom of the press could be eviscerated."[6] Rather, he concluded, this was a case where the competing consideration, the importance of the grand jury's procedures, won out over the "consequential, but uncertain, burden" on First Amendment rights. Significantly, Justice Powell, who provided the crucial fifth vote for the majority decision in *Branzburg*, stressed the "limited nature of the Court's holding."[7] "The Court does not hold," Justice Powell said, "that newsmen . . . are without constitutional rights with respect to the gathering of news or in safeguarding their sources."[8]

PELL and WASHINGTON POST

Branzburg was the first decision in which the Supreme Court clearly acknowledged that First Amendment protection extended to news gathering. The Court's only subsequent consideration of the news gathering right was in the companion cases of *Pell v. Procunier*[9] and *Washington Post v. Saxbe*.[10] In both *Pell* and *Washington Post*, reporters were challenging prison regulations which barred them from interviewing inmates the reporters had selected in advance.[11]

In *Pell*, inmates as well as reporters asserted that their constitutional rights were abridged by the interview ban. It is important to distinguish the claims made by inmates from those made by reporters. Although both have their basis in the First Amendment, they are otherwise very different.

The inmates were asserting a right to express themselves to a willing audience. The Supreme Court held that insofar as such a right existed, it was subject to the principle that "lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system."[12] Since there were alternate channels of expression open to inmates—letter-writing, visits with friends and relatives—the limitation on press interviews was held to be consistent with both the First Amendment and the legitimate demands of prison security.

Newspeople in both *Pell* and *Washington Post* were asserting a quite different First Amendment right—the right of the press to be free from government restraints on its ability to gather news. The Court had already conceded in *Branzburg* that such a right was within the protection of the First Amendment.[13] In *Pell* and *Washington Post*, the news media urged the Court to adopt a broad definition of the right to gather news. Although the Court again conceded that there were constitutional protections for news gathering, it refused to recognize that the restriction on prisoner interviews transgressed those protections.

The principal reason advanced by prison officials for enforcing the bans was that media attention to individual prisoners created disciplinary problems. Prisoners who received press coverage became "big wheels" with inordinant influence over other inmates.[14] Both the California and the federal prison systems, whose regulations were challenged in the two cases, provided abundant opportunities for the news media to explore prison facilities and to talk to random groups of inmates.[15]

In both decisions, Justice Stewart, writing for the five-vote majority, noted that neither the California regulations at issue in *Pell* nor the federal regulations at issue in *Washington Post* "are part of an attempt . . . to conceal the conditions in . . . prisons or to frustrate the press' investigation and reporting of those conditions."[16] Stewart also noted with approval the reasons advanced by the prison authorities for promulgating the interview bans:

> The experience of the Bureau accords with that of the California Department of Corrections and suggests that the interest of the press is often "concentrated on a relatively small number of inmates who, as a result, (become) virtual 'public figures' within the prison society and gai(n) a disproportionate degree of notoriety and influence among their fellow inmates."[17]

Up to this point in his opinions in *Pell* and *Washington Post*, Stewart's analysis is consistent with what has become the Court's usual approach to government action which indirectly infringes First Amendment rights—the so-called *O'Brien* test. As stated by Chief Justice Warren in *U.S. v. O'Brien*,[18] a government regulation which affects First Amendment rights is

> sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.[19]

Applying this test to the regulations in *Pell* and *Washington Post*, the dissenters concluded, as had the lower courts in *Washington Post*,[20] that the regulations failed the fourth prong of the test; that is, they were "greater than . . . necessary for the protection of" the prisons' interests.[21] The dissenters reasoned that the demands of prison security could have been met with much less stringent regulations than a complete ban on interviews.

Despite his auspicious beginning, Stewart did not find it necessary to apply the *O'Brien* test. No First Amendment right is involved, Stewart concluded, and therefore "it is unnecessary to engage in any delicate balancing of such penal considerations against the legitimate demands of the First Amendment."[22] For Stewart, First Amendment protection for news gathering extends only to insuring equality of access to information about government. He relied for this conclusion on the following passage from *Branzburg*:

> It has generally been held that the First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally. . . . Despite the fact that news gathering may be hampered, the press is regularly excluded from grand jury proceedings, our own conferences, the meetings of other official bodies gathering in executive session, and the meetings of private organizations. Newsmen have no constitutional right of access to the scenes of crime or disaster when the general public is excluded.[23]

Stewart could have construed this language to mean that the government was free to bar both press and public from access to information whenever there was substantial reason for doing so. He chose instead to read it as meaning that so long as government restrictions on access to information were applied equally to both press and public, the demands of the First Amendment were satisfied—whether or not the government had any reason at all for restricting access. It is this harsh reading of *Branzburg* that advocates of greater First Amendment protection for news gathering have been attacking in a new round of cases nearing review by the Supreme Court.

Descendants of PELL and WASHINGTON POST

Pell and *Washington Post* were not the only cases in which the right of access to prisoners or prison facilities was asserted prior to the Supreme Court's 1974 decisions. In fact, there were a remarkable number of them.[24] Almost all, however, were directed to the same narrow issue: Were prison officials required by the Constitution to permit reporters to interview specific, usually notorious, inmates? The outcomes as well as the depth of judicial analysis varied. After the Supreme Court acted, the subject of access to prisons faded briefly into the judicial background until 1976, when, helped along by reinstatement of the death penalty, new pressures for access began to build.

Since the decisions in *Pell* and *Washington Post*, related court actions have risen from both sides of the prison wall. Inmates have continued to ask courts to define and broaden the scope of their First Amendment rights.[25] And reporters have sought general access to prison facilities as well as access to particular aspects of the correctional process—individual inmates, for example, and, most spectacularly, the execution of the death penalty.

The definition and scope of inmate rights is beyond the reach of this study. It is enough to say that the general rule remains that inmates retain whatever rights are not inconsistent with their status as prisoners and that different courts vary in their interpretation of the rule.[26]

The rights of reporters to general or particularized access to the correctional process are the subject of court attention in three important cases, at least one of which is headed for Supreme Court review. In *KQED v. Houchins*,[27] which has been accepted for review by the Supreme Court,[28] reporters seek the right to tour county jail facilities on a more flexible basis than that afforded by the bimonthly public tours now provided. In *Garrett v. Estelle*,[29] reporters seek particularized access to several things, including the right to interview inmates on death row and the right to film executions. In the third case, *Kearns-Tribune v. Utah Board of Corrections*,[30] reporters were denied the right to witness the execution of Gary Gilmore.

KQED v. HOUCHINS

Because of the broad scope of the access sought and because of the manner in which the Ninth Circuit Court of Appeals chose to overcome the argument that the news media had no special right of access to sources of information not available to the public generally, *KQED* promises to be of great significance for the future of constitutional protection of the news gathering process.

The Santa Rita facility of the Alameda County Jail in California is reputed to be a grim place. Conditions in one of the buildings were described by a federal judge as "truly deplorable."[31] In an action brought by inmates, he held that the "shocking and debasing conditions which prevailed there constituted cruel and unusual punishment for man or beast as a matter of law."[32] All public access to the jail was forbidden until KQED, a public television station, and the NAACP filed a complaint in 1975 alleg-

ing deprivation of First Amendment rights resulting from the ban on access. In an effort to head off the action, jail officials instituted public tours on a first-come, first-served basis. Tours are limited to 25 people and no cameras, tape recorders or discussions with inmates are permitted. Only six tours are scheduled each year and all six of the first year's tours were filled within a few days after they were announced.[33] Also, many areas of the jail, including one of its most notorious buildings, are not included on the tour.

The federal district judge who had jurisdiction of the action ruled in favor of the station and issued an injunction which was summarized by the court of appeals:

> To allow "full and accurate coverage" of jail conditions, the preliminary injunction requires that the reporters be given access to Santa Rita "at reasonable times and hours," and that they be allowed to use photographic and sound equipment and to interview inmates. The specific method of implementing media access was left to the Sheriff's determination, and the Sheriff was given discretion to exclude the media when jail tensions made such access dangerous.[34]

The sheriff appealed the injunction, which has been stayed almost since its issuance.[35] The court of appeals panel ruled unanimously in favor of the station, but each of the three judges wrote separate opinions.

Judge Duniway asserted that despite his own personal predilections, it was inconceivable that the result could be reconciled with the outcome in *Pell* and *Washington Post*.[36] Judge Duniway's reservations about his decision stemmed from the statement in *Pell* that the Constitution does not impose "upon government the affirmative duty to make available to journalists sources of information not available to members of the public generally."[37] Judge Duniway concluded:

> I think it clear beyond the possibility of argument that the preliminary injunction from which the appeal is taken grants to KQED and other media greater access to the Santa Rita Jail than is granted to the public.[38]

The other two judges read the holdings in *Pell* and *Washington Post* differently. Stated Judge Pregerson:

> *Pell* does not stand for the proposition that the correlative constitutional rights of the public and the news media to visit a prison must be implemented identically. The access needs of the news media and the public differ. . . . Although both groups have an equal constitutional right of access to jails, because of differing needs and administrative problems, common sense mandates that the implementation of those correlative rights not be identical.[39]

Judge Hufstedler took a somewhat more complicated approach. He divided the problem into two parts. First:

> What kind of information about prisons and prisoners does the public have a right to know? Or to put the question differently, from what kind of information about prisons and prisoners should the public be excluded?[40]

And second:

> What kinds of limitations can be imposed on the public and on the news media upon the means by which the information to which the public is entitled can be gathered?[41]

In answering his first question, he concluded that conditions in the nation's prisons are matters of great importance about which the public should be informed. Thus, the press and the public are entitled equally to know about conditions in the Santa Rita Jail. But since press access and public access involve different administrative problems, it is consistent with the holding in *Pell* to treat the press and public differently as to the manner in which they are permitted to gather information. Thus, rules which might be reasonably necessary for prison security, prisoner privacy and administrative convenience where public tours are concerned, may be unreasonable when applied to news media. For example, the judge said,

> the public is entitled to know about the kind of food that is served and the circumstances under which it is prepared. It would be very difficult to guide a tour group through all of the steps of service and preparation without serious disruption of the service and the kitchen, but a small crew of media personnel could adequately observe and report the proceedings without undue interference.[42]

Both Judge Hufstedler and Judge Pregerson offered ways of softening the disturbing language in *Pell* that seemed to say that the Constitution has no effect on government restrictions on information flow unless those restrictions somehow discriminate between press and public. The First Amendment, they concluded, requires that in the absence of countervailing considerations, all information about prison operations shall be made available to the public, either directly or, when circumstances require, through the press as surrogate.

GARRETT v. ESTELLE

Since 1924, representatives of the print media had been permitted to interview condemned Texas prisoners and to witness the execution of the death penalty. As the scheduled date for the first Texas execution since 1964 approached in late 1976, the director of the Texas Department of Corrections decided to bar members of the press from the death chamber and to deny access to condemned inmates. Tony Garrett, a newsman for a public television station in Dallas, brought an action to compel the department of corrections not only to permit print reporters to have access to inmates and the death chamber, but also to permit him as a representative of the broadcast media to film the execution. A federal district judge granted Garrett all the access he had requested,[43] but that portion of the district court's opinion which would have permitted filming of executions was reversed by the Fifth Circuit Court of Appeals.[44]

The district court was at pains to distinguish Garrett's action from *Pell* and *Washington Post* and cited four differences. Here, the news media were not trying to report only the day-to-day activities inside the prison; they were "seeking to report on one of the most important and controversial public issues of the day: capital punishment."[45]

Second, in *Pell* and *Washington Post*, there was substantial news media access to the correctional institutions involved. In Texas, "there is no public access whatsoever to 'death row' and no public witnessing of an execution."[46] Third, the justifications for denial of interviews present in *Pell* and *Washington Post* were absent. Texas officials conceded that their former policy of permitting interviews "never compromised prison security in any way."[47] Fourth, the court said that in *Pell* and *Washington Post* the Supreme Court was concerned that the granting of interviews might diminish the deterrent value of imprisonment, a consideration inapplicable to condemned prisoners.[48]

Having thus disposed of *Pell* and *Washington Post*, the district court quoted *Branzburg*: "without some protection for seeking out the news, freedom of the press could be eviscerated."[49] This, the court concluded, "compels the holding that the absolute ban on news media access to the prisoners on 'death row' and to the execution chamber . . . infringes on the First Amendment freedom of press."[50] The court stressed, however, that "prison officials have broad authority to regulate and limit access where there are security, disciplinary, rehabilitation, administrative, or other reasons for doing so."[51] In this case, no such reasons were found to exist.

The opinion is at its most striking when the court goes on to conclude that the state also is forbidden to prevent filming of the execution. The state argued that the showing of films of the execution on television news programs would be an "offense to human dignity," "distasteful" or "shocking."[52] The court responded:

> The government cannot be allowed to bar cameras from governmental proceedings without more compelling and factually demonstrable reasons than such vague and highly subjective concepts as "taste" and "dignity." Unless there is some substantial factual basis for denying access to public proceedings, it is for the news media itself to determine what governmental activities are sufficiently tasteful, dignified, or acceptable to be reported.[53]

On Aug. 3 1977, the Fifth Circuit Court of Appeals announced its decision to reverse the holding of the district court that the First Amendment required Texas to admit Garrett and his camera to the execution chamber. The other provisions of the district court's opinion were not appealed.

In reinstating the camera ban, the court of appeals relied on a strict reading of *Pell* and *Washington Post*:

> We find, then, that according to the principle enunciated by the Supreme Court in *Pell* and *Saxbe*, "the First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally." Therefore, Garrett cannot find his right to film Texas executions in the first amendment.[54]

Garrett raised two other arguments against the camera ban in framing his appeal. He contended that since print reporters were permitted to use their pads and pencils in reporting the execution, it was a violation of the equal protection provision of the Fourteenth Amendment to forbid him to use his camera. Rejecting the argument, the court of appeals stated:

> The Texas media regulation denies Garrett use of his camera, and it also denies the print reporter use of his camera, and the radio reporter use of his tape recorder. . . . There is no denial of equal protection.[55]

Garrett, joined by noted media lawyer Dan Paul, who appeared before the court in behalf of the Reporters Committee for Freedom of the Press as *amicus curiae*, also argued that a proposal by the state to make available a closed circuit television broadcast of the execution for viewing by reporters constituted a publication of the event and that refusal to permit republication of the broadcast was an illegal prior restraint on publication. This argument, too, was rejected.[56]

The likelihood of Supreme Court review of the Fifth Circuit decision will depend on the outcome of the Court's hearing of *KQED*.

KEARNS-TRIBUNE v. UTAH BOARD OF CORRECTIONS

Utah statutes narrowly limit attendance at executions. Only officials and a handful of witnesses selected by the accused are allowed to be present. The publisher of the Salt Lake City *Tribune* and a television station brought an action to have the statutory limitation declared unconstitutional and to obtain an injunction permitting members of the press to view the execution of Gary Mark Gilmore. The federal district court ruled in *Kearns-Tribune v. Utah Board of Corrections* that the statute was constitutional.[57] The court read *Pell* and *Washington Post* as denying "the press a greater right of access to individual prison inmates than is accorded to the general public."[58] Since both press and public were barred from attendance at Utah executions, the court concluded that no constitutional basis for setting aside the statute existed. Therefore, it was enough that a rational basis for the statute had been shown; that is,

> the statute seeks to avoid sensationalizing the event. Further, the statute reflects the concerns of institutional discipline and security as well as a reasonable deference to the privacy of the condemned man under these circumstances.[59]

The decision in *Kearns-Tribune* awaits review in the Tenth Circuit Court of Appeals.

Conclusion

The Supreme Court recognized in *Branzburg* and in *Pell* and *Washington Post* that without some First Amendment protection for seeking out the news, "freedom of the press could be eviscerated." As the courts struggle with the latest round of media demands for greater access to one source of news about public issues—prisons and prisoners—they will be asked to define in greater detail the scope of First Amendment protection for news gathering. The courts may choose to stick to the same narrow piece of ground tentatively staked out in *Branzburg* and *Pell* and *Washington Post*; that is, that the touchstone of First Amendment protection of news gathering is equality of access. So long as all members of the press and public are given equal opportunity to obtain information about government activity—even if that means no information—the requirements of the First Amendment will be held to be satisfied.

On the other hand, the courts may choose to speak in broader terms. The next logical step would seem to be to

follow the lead of the court of appeals in *KQED;* that is, that all information about government is required by the First Amendment to be made public, either directly or through the press as surrogate, unless the government can advance a compelling reason for withholding the information. Such a step would hardly insure that, as a matter of fact, the public will have the opportunity to know everything it needs to know in order to carry out its role in a free society, but it should act as a powerful force favoring maximum disclosure.

FOOTNOTES

1. *Schenck v. United States*, 249 U.S. 47 (1919).
2. Professor Jerome Barron is well-known as the most articulate spokesman for the view that the First Amendment requires that members of the public be accordec an affirmative right of access to the media of mass communication. See Jerome Barron, *Freedom of the Press for Whom* (Bloomington: Indiana Univ. Press, 1973). His theories were rejected by the Supreme Court in *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241 (1974).
3. *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964).
4. *Branzburg v. Hayes*, 408 U.S. 665, 707 (1972).
5. *Ibid.* at 690-91.
6. *Ibid.* at 681.
7. *Ibid.* at 709 (Powell, J., concurring).
8. *Ibid.*
9. *Pell v. Procunier*, 417 U.S. 817 (1974).
10. *Washington Post v. Saxbe*, 417 U.S. 843 (1974).
11. The regulations at issue have since been modified to permit the access the news media sought. See Federal Prison System Policy Statement No. 1220.1B, July 1, 1976.
12. 417 U.S. 817, 822, quoting *Price v. Johnston*, 334 U.S. 266, 285 (1948).
13. See note 4 *supra*.
14. 417 U.S. 817, 831-32.
15. *Ibid.* at 830-31.
16. 417 U.S. 817, 830; 417 U.S. 843, 847.
17. 417 U.S. 843, 848, quoting 417 U.S. 817, 831-32.
18. *U.S. v. O'Brien*, 391 U.S. 367 (1968).
19. *Ibid.* at 367, 377.
20. The first lower court opinion was *Washington Post v. Kleindienst*, 357 F.Supp. 770 (D.C. 1972). Judgment in favor of the news media was stayed by the Supreme Court pending appeal, 406 U.S. 912 (1972). The court of appeals decision remanding the case for further proceedings in the district court is reported at 477 F.2d 1168 (D.C. Cir. 1972). The district court's second opinion is at 357 F.Supp. 779 (D.C. 1972) and the court of appeals second opinion is at 494 F.2d 994 (D.C. Cir. 1974). None of the four opinions was unfavorable to the news media claim.
21. 417 U.S. 843, 865 (Powell, J., dissenting), quoting 494 F.2d 994, 999.
22. *Ibid.* at 849.
23. 417 U.S. 817, 833-34, quoting 408 U.S. 665, 684-85.
24. See, e.g., *Burnham v. Oswald*, 342 F.Supp. 880 (W.D.N.Y. 1972); *Seattle-Tacoma Newspaper Guild v. Parker*, 480 F.2d 1062 (9th Cir. 1973); *Mitford v. Pickett*, 363 F.Supp. 975 (E.D.Ill. 1973); *Houston Chronicle v. Kleindienst*, 364 F.Supp. 719 (S.D.Tex. 1973); and *McMillan v. Carlson*, 369 F.Supp. 1182 (D.Mass. 1973).
25. See, e.g., *Main Road v. Aytch*, 522 F.2d 1080 (3d Cir. 1975).
26. *Ibid.*
27. *KQED v. Houchins*, 546 F.2d 284 (9th Cir. 1976).
28. *Houchins v. KQED*, 97 S.Ct. 2630 (1977).
29. *Garrett v. Estelle*, 2 Med. L. Rptr. 2265 (5th Cir. 1977).
30. *Kearns-Tribune v. Utah Board of Corrections*, 2 Med. L. Rptr. 1353 (D. Utah 1977).
31. *Brenneman v. Madigan*, 343 F.Supp. 128, 132-33 (N.D.Cal. 1972).
32. *Ibid.*
33. Brief in Opposition to Petition for *Certiorari* at 4, *Houchins v. KQED*, 97 S.Ct. 2630 (1977).
34. 546 F.2d 284, 285.
35. See *Houchins v. KQED*, 97 S.Ct. 773 (1977). Opinion of Rehnquist, J., granting continuation of stay.
36. 546 F.2d 284, 294.
37. *Ibid.*, quoting 417 U.S. 817, 834.
38. *Ibid.*
39. *Ibid.* at 286.
40. *Ibid.* at 295.
41. *Ibid.*
42. *Ibid.* at 296.
43. 424 F.Supp. 468.
44. 2 Med. L. Rptr. 2265 (5th Cir. 1977).
45. 424 F.Supp. 471.
46. *Ibid.*
47. *Ibid.*
48. *Ibid.*
49. *Ibid.* at 472, quoting 408 U.S. 665, 681.
50. *Ibid.*
51. *Ibid.*
52. *Ibid.*
53. *Ibid.* at 473.
54. 2 Med. L. Rptr. 2265, 2268 (5th Cir. 1977).
55. *Ibid.*
56. *Ibid.* at 2269.
57. 2 Med. L. Rptr. 1353 (D.Utah 1977).
58. *Ibid.*
59. *Ibid.* at 1354.